



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2023-0090; FRL-11014-01-R6]

Air Plan Approval; Oklahoma; Revisions to Air Pollution Control Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve portions of the revisions to the State Implementation Plan (SIP) for Oklahoma submitted by the State of Oklahoma on January 30, 2023. This action addresses amendments to Subchapter 37, Control of Emission of Volatile Organic Compounds (VOCs) and Subchapter 39, Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas, in the Oklahoma Administrative Code Title 252, Chapter 100, Oklahoma Department of Environmental Quality to improve the clarity and consistency of the Oklahoma SIP.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2023-0090, at <https://www.regulations.gov> or via email to shahin.emad@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the

primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Mr. Emad Shahin, 214-665-6717, shahin.emad@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: For information on the revisions addressing emissions of VOC, please contact Mr. Emad Shahin, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-6717, shahin.emad@epa.gov. The EPA encourages the public to submit comments via <https://www.regulations.gov>. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” or “our” means the EPA.

I. Background

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that air quality meets the EPA’s National Ambient Air Quality Standards (NAAQS). These ambient standards are established under CAA section 109 and currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter (PM), and sulfur dioxide. A state’s air regulations are contained in its SIP, which is basically a clean air plan. Each state is responsible for developing SIPs to demonstrate how the NAAQS will be achieved, maintained, and enforced. The SIP must be submitted to the EPA for approval and any changes a state makes to the approved SIP also must be submitted to the EPA for approval.

On January 24, 2023, the Secretary of Energy and Environment for the State of Oklahoma (“the State”) submitted revisions of the Oklahoma SIP to the EPA. The revisions address Subchapters 2, 8, 37, 39, and Appendix Q in the Oklahoma Administrative Code (OAC) Title 252, Chapter 100. The submitted revisions to Subchapters 37 and 39 are severable and in this action, we are proposing to approve the revisions to Subchapters 37 (Control of Emission of Volatile Organic Compounds (VOCs), and 39 (Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas). We are addressing the revisions to Subchapter 2 and Appendix Q in a separate action¹ and plan to address the revisions to Subchapter 8 in separate future action.

The criteria used to evaluate these SIP revisions are found primarily in section 110 of the Act. Section 110(l) requires that a SIP revision submitted to the EPA be adopted after reasonable notice and public hearing and precludes the EPA from approving a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act.

The submitted revisions were promulgated in compliance with the Oklahoma Administrative Procedures Act and published in the *Oklahoma Register*, the official state publication for rulemaking actions. These revisions are posted in the docket for this action.

II. The EPA’s Evaluation

Subchapters 37 and 39

In this action, we are proposing to approve revisions to OAC 252:100, Subchapters 37 and 39 (OAC 252:100-37 and 252:100-39). The submitted revisions are available in the docket for this action. A summary of the State’s submitted revisions follows.

1. OAC 252:100-37-16 (Loading of VOC) revises OAC 252:100-37-16(c). The revision makes clear the Department’s long standing interpretation that loading operations from condensate tanks at natural gas compressor stations are not considered loading

¹ See 88 FR 13755 (March 6, 2023).

facilities for the purpose of this section, and thus are not subject to the requirements of this section.

2. OAC 252:100-39-45 (Petroleum (solvent) Dry Cleaning) amendment to correct the approval process for facilities that incinerate petroleum solvents dry cleaning filters and removes the outdated compliance schedule. Section 45 is specific to petroleum solvent dry cleaners in Tulsa County and the revision clarifies that incineration of petroleum dry cleaning filters would only be allowed if permitted by the appropriate regulatory entity.

The revisions to OAC 252:100-37 clarify the State's interpretation of loading facility as a facility whose main purpose is for the loading/unloading of VOCs in relatively large quantities using specialized equipment. Although loading operations occur at compressor stations, the facility itself is not considered a loading facility and was therefore not intended to be covered by these requirements. The transfer of condensate and produced water from atmospheric storage tanks into individual tanker trucks at a compressor station is a different type of operation (both in scale and in the equipment used). For example, applicable loading facilities include the bulk transfer of gasoline at a pipeline terminal/bulk gasoline distribution system.

There are several other provisions in Chapter 100 that apply to compressor stations. The requirements in 252:100-37-15(b) for submerged fill or a vapor recovery system would apply to most condensate tanks at compressor stations since a typical tank is about 400 barrels (16,800 gallons) and for compressor stations that have effluent water separators 252:100-37-37 would apply. Condensate tanks at compressor stations are covered under other parts of Subchapter 37, namely 252:100-37-15, in addition to any federal NSPS that may also apply such as Subpart OOOO.

Examination of the revisions indicates that the submitted revision to Subchapter 39-45 is proper and provides additional clarity. The specification that incineration of petroleum dry cleaning filters would only be allowed if permitted by the appropriate regulatory entity updates

this provision to appropriately address existing law for incineration facilities in Oklahoma. The removal of an outdated deadline streamlines the SIP for additional clarity.

The submitted revisions to OAC 252:100-37 and 39 add clarity and consistency to the Loading of VOC and Petroleum (solvent) Dry Cleaning rules. The revisions do not relax the current SIP rules and are consistent with Federal regulations at 40 CFR 60 and 40 CFR 61. Therefore, and consistent with CAA section 110(l), we do not expect these revisions to interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. We are proposing to approve the submitted these revisions to Subchapter 37, Section 16 and Subchapter 39, Section 45.

III. Impact on Areas of Indian Country

Following the U.S. Supreme Court decision in *McGirt v Oklahoma*, 140 S. Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Pub. Law 109-59, 119 Stat. 1144, 1937 (August 10, 2005) ("SAFETEA"), to administer in certain areas of Indian country (as defined at 18 U.S.C. § 1151) the State's environmental regulatory programs that were previously approved by the EPA for areas outside of Indian country. The State's request excluded certain areas of Indian country further described below. In addition, the State only sought approval to the extent that such approval is necessary for the State to administer a program in light of *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014).²

On October 1, 2020, the EPA approved Oklahoma's SAFETEA request to administer all the State's EPA-approved environmental regulatory programs, including the Oklahoma SIP, in the requested areas of Indian country. As requested by Oklahoma, the EPA's approval under

² In *ODEQ v. EPA*, the D.C. Circuit held that under the CAA, a state has the authority to implement a SIP in non-reservation areas of Indian country in the state, where there has been no demonstration of tribal jurisdiction. Under the D.C. Circuit's decision, the CAA does not provide authority to states to implement SIPs in Indian reservations. *ODEQ* did not, however, substantively address the separate authority in Indian country provided specifically to Oklahoma under SAFETEA. That separate authority was not invoked until the State submitted its request under SAFETEA, and was not approved until EPA's decision, described in this section, on October 1, 2020.

SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. § 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively “excluded Indian country lands”).

EPA’s approval under SAFETEA expressly provided that to the extent EPA’s prior approvals of Oklahoma’s environmental programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by the EPA’s approval of Oklahoma’s SAFETEA request.³ The approval also provided that future revisions or amendments to Oklahoma’s approved environmental regulatory programs would extend to the covered areas of Indian country (without any further need for additional requests under SAFETEA).⁴

As explained earlier in this action, the EPA is proposing to approve revisions to portions of the Oklahoma SIP that were submitted by the State of Oklahoma on January 24, 2023. More specifically, we are proposing to approve a revision providing clarification to OAC 252:100-37-16 of Subchapter 37, Control of Emission of Volatile Organic Compounds (VOCs) and amending language and correcting approval process for OAC 252:100-39-45 of Subchapter 39, Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former

³ EPA’s prior approvals relating to Oklahoma’s SIP frequently noted that the SIP was not approved to apply in areas of Indian country (consistent with the D.C. Circuit’s decision in *ODEQ v. EPA*) located in the state. *See, e.g.*, 85 Fed. Reg. 20178, 20180 (April 10, 2020). Such prior expressed limitations are superseded by the EPA’s approval of Oklahoma’s SAFETEA request.

⁴ On December 22, 2021, EPA proposed to withdraw and reconsider the October 1, 2020, SAFETEA approval. *See* <https://www.epa.gov/ok/proposed-withdrawal-and-reconsideration-and-supporting-information>. EPA expects to have further discussions with tribal governments and State of Oklahoma as part of this reconsideration. EPA also notes that the October 1, 2020, approval is the subject of a pending challenge in federal court. *Pawnee Nation of Oklahoma v. Regan*, No. 20-9635 (10th Cir.). EPA may make further changes to the approval of Oklahoma’s program to reflect the outcome of the proposed withdrawal and reconsideration of the October 1, 2020, SAFETEA approval. To the extent any change occurs in the scope of Oklahoma’s SIP authority in Indian country before finalization of the proposed rule, such a change may affect the scope of the EPA’s final action on the proposed rule.

Nonattainment Areas, in the Oklahoma Administrative Code Title 252, Chapter 100, Oklahoma Department of Environmental Quality Consistent with the D.C. Circuit’s decision in *ODEQ v. EPA* and with EPA’s October 1, 2020, SAFETEA approval, if this approval is finalized as proposed, these SIP revisions will apply to all Indian country within Oklahoma, other than the excluded Indian country lands, as described earlier. Because – per the State’s request under SAFETEA – EPA’s October 1, 2020, SAFETEA approval does not displace any SIP authority previously exercised by the State under the CAA as interpreted in *ODEQ v. EPA*, the SIP will also apply to any Indian allotments or dependent Indian communities located outside of an Indian reservation over which there has been no demonstration of tribal authority.⁵

IV. Proposed Action

We are proposing to approve a portion of the revisions to the Oklahoma SIP, submitted to us on January 30, 2023. Specifically, we are proposing to approve revisions to OAC 252:100, Subchapters 37 and 39. We are proposing to approve these revisions in accordance with section 110 of the Act.

V. Environmental Justice Considerations

EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within Oklahoma. EPA then compared the data to the national average for each of the demographic groups. The results of this analysis are being provided for informational and transparency purposes. The results of the demographic analysis indicate that, for populations within Oklahoma, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino) is less than the

⁵ In accordance with Executive Order 13990, EPA is currently reviewing our October 1, 2020, SAFETEA approval and is engaging in further consultation with tribal governments and discussions with the state of Oklahoma as part of this review. EPA also notes that the October 1, 2020, approval is the subject of a pending challenge in federal court. (*Pawnee v Regan*, No. 20-9635 (10th Cir.)). Pending completion of EPA’s review, EPA is proceeding with this proposed action in accordance with the October 1, 2020, approval. EPA’s final action on the approved revisions to the Oklahoma SIP that include revisions to OAC Title 252 Chapter 100 Subchapter 39 (OAC 252:100-39) Sections 4, 16, 40, and 41 will address the scope of the state’s program with respect to Indian country, and may make any appropriate adjustments, based on the status of our review at that time. If EPA’s final action on Oklahoma’s SIP is taken before our review of the SAFETEA approval is complete, EPA may make further changes to the approval of Oklahoma’s program to reflect the outcome of the SAFETEA review.

national average (38.5 percent versus 43.1 percent). Within people of color, the percent of the population that is Black or African American alone is less than the national average (7.8 percent versus 13.6 percent) and the percent of the population that is American Indian/Alaska Native is greater than the national average (9.7 percent versus 1.3 percent). The percent of the population that is two or more races is greater than the national average (6.6 percent versus 2.9 percent). The percent of people living in poverty in Oklahoma is greater than the national average (15.6 percent versus 11.6 percent).

The proposed approval strengthens the SIP by adding clarity and consistency to the SIP. We expect that this action will generally be neutral or contribute to reduced environmental and health impacts on all populations in Oklahoma, including people of color and low-income populations. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

The ODEQ did not evaluate environmental justice considerations as part of their SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an environmental justice analysis,⁶ as is described above. The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action.

VI. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Oklahoma regulations as discussed in Section II, The EPA's Evaluation, and Section IV, Proposed Action, of this preamble. We have made, and will continue to make, these documents generally available electronically

⁶ Our Environmental Justice Considerations are posted in the docket.

through www.regulations.gov (please contact the person identified in the FOR FURTHER INFORMATION CONTACT section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

Oklahoma did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an environmental justice analysis, as is described above in the section titled, “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous people.

This proposal to approve revisions to the Oklahoma SIP will apply, if finalized as proposed, to certain areas of Indian country throughout Oklahoma as discussed in the preamble,

and therefore has tribal implications as specified in EO 13175 (65 FR 67249, November 9, 2000). However, this action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or related tribal laws. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), the EPA has offered consultation to tribal governments that may be affected by this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 7, 2023.

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Regional Administrator, Region 6.

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